

‘Fraud in Judicial System’ as a Language Crime: Forensic Linguistics Approach

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Abstract—Forensic linguistics is a discipline coordinated with legal goals in the judicial system, focusing on all branches of linguistics including phonetics, semantics, discourse etc. This science is not so known in Iran; whereas, it can have a lot of applications in judicial system. Fraud is a kind of crime in which language plays a central role in forming. There are three conditions in forming of fraud: first; dishonest tools to cheat others, second; victim’s lack of knowledge about dishonest tools, third; the lost possession belonged to the victim. At least, realization of the second condition requires swindler to deceive his victim by language. The author aims at providing a conceptual structure for the crime of fraud with linguistic analysis. Having reviewed different cases in courts and Bureau of Police Investigation, the author offered a conceptual frame with six components including requirement/greed, proposal/advertisement, perlocutionary effect, agreement based on commitment speech act, problem (not realizing of commitment speech act) and completion. This is a field research and applies at analysis-description method.

Index Terms—forensic linguistics, language crime, fraud, conceptual frame

I. INTRODUCTION

In criminology, crime is examined through law and other sciences. Therefore, we face with combination of different sciences. Different experts like psychiatrists, psychologists, sociologists, physicians, lawyers... have been analyzing and solving crimes, so criminology is not a pure science but an applied one.

“criminology is affected by sociology, psychology, biology and statistics. These sciences, especially, sociology and psychology have different definitions; therefore, it is hard to have a specified definition of criminology.” (Nurbaha, 1377/2000, pp.51-57).

Generally, criminology is not a closed science, because crimes are committed in different ways and forms. New and up-to-date forms of crimes committed in internet show need of internet experts.

The crimes are formed through language are the crimes which can be studied from a new viewpoint. Insult, foul language, threat, fraud, perjury, forged and fake advertisement, plagiarism are formed with language. Even crimes like theft, kidnapping and murder which require language before realization can be considered as language crimes. It shows linguistic analysis more than before, so forensic linguistics as a new science incorporated linguistics and the law.

II. METHODOLOGY

Having studied different sources, the author gathered data in Iranian courts and Bureau of police investigation. Then, the author identified crime of fraud. She considers two points; first she analyzes the data linguistically, second studies data with consideration of Iran’s Codes. In this field research, the author observed and studied more than 100 cases (different crimes) in courts and Bureau of police investigation. The result showed that there is compatibility between linguistic and legal features. Therefore, a conceptual frame about fraud can be effective in explaining of fraud. This research applies at descriptive and analytic method.

III. FORENSIC LINGUISTICS AND ITS HISTORY

Forensic linguistics is a sub-branch of linguistics which mainly deals with linguistic theories, findings and methods to solve language problems.

“Foreign language learning is probably the most important application of applied linguistics. Even at the first look, language learning seems to be the only discipline related to applied linguistics; however, there are also other applications”. (Crystal, 2003, p.29). One of the new branches of applied linguistics is forensic linguistics. “Forensic linguistics is an interdisciplinary course originated from linguistics and law which has developed in America and Europe since 1997. Since then, linguists offer their evidences in courts for detection of realities and more careful judgment. This cooperation is developing increasingly.” (Tiersma and Soolan, 2003, p.213) Shuy defines forensic linguistics, quoting from Levi (1994), as follows: “Forensic linguists have been developing their works into communication, advertisement and common issues between language and law. Now forensic linguists deal with sound identification, identification of writer of a written text, asymmetry of power in courts, miscommunication between

lawyer and client, perjury, problems related to legal texts, libel, problems about brands, interpretation and translation of communication in courts, recorded interviews as evidences. This field has been called forensic linguistics since 1980.” (Shuy, 1998)

If we want to find the origin of forensic linguistics, we should go back to 60 years ago. “In 1949, Philbrick published his book under the title of “Language and the Law: the Semantics of Forensic English¹” and this work paved the way for future researches. Quoting from (Eades, 1994), (Levi, 1993), (Coulthard & Johnson, 2007)...”

Most of the researchers refer to Jan Svartvik’s work named ‘The Evans’ Statements’ as the first typical work related to forensic linguistics. “Svartvik could show the linguistic analysis focusing on four statements which had been made to police officers by Timothy Evans about the deaths of his wife and baby daughter. The analysis showed the incriminating parts of four statements had a grammatical style measurably different from that of uncontested parts of the statements and a new forensic area was born.” (Coulthard & Johnson, 2007), (Gibbons, 2003), (Olsson, 2004) etc.

Initially, the growth of forensic linguistics was slow up to the past 15 years. Since then, there has been a rapid growth in the amount of cooperation between courts and linguists. Linguistic findings in legal process show development of a new and scientific science which joins the relationship between linguistics and law. This new science can be as effective as legal medicine, legal psychology etc. There is a growing need for this new science in courts; however, many countries like Iran have not heard anything about this science. Even the pioneer countries like America and England have enjoyed this new-born science just in the last decade.

IV. CRIMINOLOGY

“Criminology is study of crime. It deals with creation of crime, development of crime and prevention of crime. Criminology is under effect of sociology, psychology, biology and statistics, all of which have different definitions especially sociology and psychology. Therefore, it is hard to have an acceptable and specified definition of criminology. However, we can have limited definitions. Professor Vouin in his work named ‘penalty and criminology’ says that criminology is scientific study of crime.” (Nurbaha, 1377/2000)

In criminology, different sciences integrate with each other ;therefore, linguistics can be added to the law like sociology, psychology, biology and statistics. Since the arrival of linguistic analysis to the law, a new form of linguistics under the title of forensic linguistics was formed; consequently, judicial system achieved a new chance to solve language crimes like foul language, perjury, libel, plagiarism, threatening message and letter, kidnapping letter, suicide letter, bribery etc.

V. CRIME AND LANGUAGE CRIME

Longman (2006) defines crime as “illegal activities in general”. Since crime has different forms; that is, an activity might be a crime in one view and not be crime in another view, a comprehensive and acceptable definition has not been offered. In Islamic jurisprudence, crime is defined on the basis of Koran: “to do or to tell something that God has forbidden.” An Islamic article in Iranian codes says: “‘act’ or ‘omission’ for which there is penalty, is referred to as a crime.” For example, ‘fraud’ is ‘act’ and ‘driver’s avoidance to help an injured in an accident’ is ‘omission’

One of the crimes is language crime and its culprits are punished according to codes. “There are a number of speech acts that may be illegal- in other words there are crimes committed by performing some kind of illocutionary act, such as offering a bribe; accepting a bribe; threats; extortion; perjury; suborning a person to a language crime; soliciting an illegal act (e.g. hiring a hitman); using foul language.” (Gibbons, 2003, p.261)

About speech act, we should refer to this point that some part of utterance has social function. To communicate with language is something more than grammatical, semantic and lexical knowledge; therefore, we should know how to ask, how to demand, how to suggest and how to thank. In other words, we have to learn how to use language knowledge. In Austin’s terminology (1962) these functions are called speech acts. One of these speech acts is commissive one. This kind of speech act commits the speaker to doing something in the future, such as a promise or threat. In the frame the author wants to offer, the commissive speech act is one of the stages.

These definitions show that identifying language crimes is a sub-part of criminology and linguists can help to solve these kinds of crimes.

VI. FRAUD

Fraud is one of the language crimes in which language has a central part in forming because a swindler uses his deceiving language- regardless of his deceiving tools. “A swindler is a person who attracts others’ trust by deceiving actions, then takes the victims possessions away. In other words, three conditions should be met to form fraud first; dishonest tools to cheat others, second; victim’s lack of knowledge about dishonest tools, third; the lost possession belonged to victim.” (Shambayati, 1375/1998, p.162)

Here, the author presents summary of one of the cases with linguistic and legal analysis. Worth saying, the author avoids using the real name of the persons involved and uses x, y... instead. IR and IE are used for the interrogator and

¹ However this book is not a precursor to modern forensic linguistics. It analyses the semantics of legal language.

culprit respectively. The sign of ↑ shows rising intonation, { } is used for more explanation and () shows violation of linguistic principles.

► **Summary of the case:** One person with forged name 'x' bought some masonry, two laptops and some tar from different ones. He gave the sellers bad post-dated cheques. During some days before the sellers go to bank to cash their cheques, swindler and poor sellers made a call with each other and the swindler answers the phone and still introduced himself with his forged name, x.

Finally, when the sellers went to bank, they understood their cheques were bad. They complained to the court and Mr x was arrested. He denied everything and even claimed his name was y. He said he had never seen the sellers before. The culprit had been condemned to fraud before in another court where he was named z! At last, judge condemned him and fined him 30000\$ for fraud. The main point is that the swindler denied everything up to the end of trial. The judge condemned him because of his background and numerous complainants. Here just some parts of interrogation are presented:

IR: Do you know x?

IE: No!

IR: Do you know z?

IE: No!

IR: Did you buy some tar from this man?

IE: No!

IR: Did you buy two sets of laptop from this man?

IE: No Sir! I↑ had not seen these men till 2009/1/8. I had not seen them till 2009/1/8 6 pm. I↑ did not buy even one cigarette, one tea bag from them.

IR: How many kids have you got? Do you have any at all?

IE: Seven. Two of them are dead. My son in law died recently, he has a baby. My daughter has come to my house after her husband fell down from scaffold. (violation of Gricean cooperative principle; relation maxim) { The complainants showed the judge their bad cheques} .

IR: Did you give them these cheques?

IE: Neither cheques I gave them, nor money I own to give them. I do not have any other incriminating case in another court². Before this trial I had dream about all these accidents. Swearing to God, when I was walking in jail I remembered my dream and found I saw all these men in my dream. (violation of Gricean cooperative principle; relation maxim, quantity maxim) { .He denies names of x and z. }

IR: Ok. Now who are you?

IE: I am y, was y and will be y.

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IR: Do you know these men? Are you in debt?

IE: I am not in debt. I don't know these men either. But **if I had some money, I would pay** these two but not that one! { Two complaints were calm but one of them got into a dispute over his possession before judge again and again. }

IR: If you are not in debt, why do you want to give them money?

IE: incubus money.

IR: If you did not buy anything, why do you want to give money?

IE: **I don't want to give money.** (contradiction with two sentences before)

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{judge orders culprit and others to leave the court room. In the evening, the trial was held again. While the judge was murmuring some parts of case, the culprit prayed in a quiet voice. }

IR: What to do you want to do now? (implicature: what do you want to do as indemnity?; entailment: one crime has been committed and need to be compensated³)

IE: Silence {He murmurs. }

IR: Reply to me! What are you murmuring?

IE: I am saluting Mohammad-Islamic prophet. Since childhood I am used to it. I strongly believe in this salutation. (topic shift; violation of Gricean cooperative principle: quantity maxim and relation maxim)

A. Linguistic Analysis

In discourse, there is a principle named "cooperative principle" which was developed first by Grice. In Gricean's view, each communication requires interaction and cooperation of the speaker and listener or writer and reader. In other

² The culprit knows if he is condemned, he has to pay money twice the price of taken possessions. He also knows his dark background has effect on final sentence, so he denies his judicial precedent.

³ To study more, refer to M.A. thesis entitled 'Role of Pragmatic Techniques in Discovery of Crime: A Forensic Linguistics Approach', Sirous Azizi, Islamic Azad University, 2011.

words, the persons involved in communication cooperate with each other continually. If they break this procedure, the communication will expose flaw or interrupt; therefore, the explanation will be needed to comprehend.

“‘Cooperative principle’ presupposes that the cooperation between the persons involved is what the persons need. In order to have a comprehensive communication, there should be some rules that the persons have to observe. In other words ‘cooperative principle’ says the persons should participate in any stage of communication to meet their aims.” (Grice, 1975, p.45)

Yule (2000) quoted from Grice that a comprehensive communication should be based on:

- **Quantity Maxim**

- i. Make your contribution as informative as is required for the current purposes of the exchange
- ii. do not make your contribution more informative than is required

- **Quality Maxim**

- i. Do not say what you believe to be false
- ii. Do not say that for which you lack adequate evidence

- **Relation Maxim**

- i. Make your contribution relevant

- **Manner Maxim**

- i. Avoid obscurity
- ii. Avoid ambiguity
- iii. Be brief
- iv. Be orderly

(Yule, 2000, pp.36-37)

In interrogation, quantity maxim is often violated by the accused one. Interrogation aims to get necessary information from the accused or culprit and if we want to give an example for this maxim, we can refer to a complete interrogation which the accused denies the incrimination first, but at last he accepts the incrimination. Therefore, the author thinks this maxim is not often observed during an interrogation. We can admit quality maxim is also violated in this kind of interrogation.

If one of these maxims is not observed, the communication will expose flaw. This flaw is meaningful and can be considered as one of the forming elements of the crime. Cutting (2002, pp.70-73) refers to four key words. The author interprets meaning of these words as follows:

-flout: to deliberately disobey a law, rule etc, without trying to hide what you are doing. (Longman, 2006, p.615)

(Cutting says: ‘two persons are involved in one cooperation and know each other’s world and knowledge, one of them does not refer to something intentionally because he knows his audience can infer his unsaid words.’ In other words, the message can be conveyed without problem)

-violate: to disobey or do something against an official agreement, law, principle etc. (Longman, 2006, p.1840)

(Cutting says: ‘two persons are involved in one cooperation and know each other’s world and knowledge, one of them does not refer to something intentionally because he knows his audience cannot infer his unsaid words. He tries to form a distracting implicature.’ In other words, the message cannot be conveyed.)

-infringe: to do something that is against a law or someone’s legal rights. (Longman, 2006, p. 834)

(Cutting says: ‘the message cannot be conveyed because of deficient function of language.’)

The author thinks infringe can be a cover term for violate and flout.

-opt out: to avoid doing a duty. (Longman, 2006, p.1157)

(Cutting says: ‘two persons involved in one cooperation do not give each other some information because of different reasons like moral problems. For example one of them apologizes and avoids telling something.’)

In interrogation, the culprit and accused ones rarely use ‘flout principle’, he tries to use the other three principles; violate, infringe, opt out.

1. Linguistic Findings

1)-Since we aim to find linguistic features effective in forming the crime, we can say ‘topic shift’ and ‘violation of cooperative principle especially relation maxim’ in culprit and accused one’s utterances seem to be some linguistic evidences in forming the crime. In this case, judge seems to condemn the swindler because of words of complainants, their testimony and dark background of the swindler.

2)-Worth saying that judge used some linguistic principle to make the swindler confess. These are contradiction, implicature and entailment shown in the text. To study more, refer to M.A. thesis entitled ‘Role of Pragmatical Techniques in Discovery of Crime: Forensic Linguistics Approach’, Sirous Azizi, Islamic Azad University, 2011.

3)- Having observed many cases in courts and Bureau of Police Investigation, the author can claim swindlers are the most effective and dominant in speech. So they deny their incriminating issues up to the end of trial. Their reply to yes/no questions like “Did you buy some tar from this man?” is negative; however, other culprits like murders, thieves are more honest. Therefore, to deny the incrimination with emphatic and rising intonation ↑ is one of the linguistic features effective in forming the crime. (shown in text)

4)- Contradiction can be one of the linguistic features effective in forming fraud. To find out this crime, we can use cooperative principle, schema and frame. [contradiction is shown in bold sentences].

'Schema is structures of expectation to interpret new experiences. Schema is background knowledge stored in our memory.' Yule continues and introduces another mental pattern named frame. 'Frame is a shared pattern of a social group. For example one apartment has kitchen, bathroom and bedroom. Frames represent stereotyped situations. When one encounters a new situation, one selects from memory a structure.' (Yule, 2000, pp.85-86) Violation of schema and frame can be used in forming crime⁴.

B. Legal Analysis

"A swindler is a person who attracts others' trust by deceiving actions, then takes the victims possessions away. In other words, three conditions should be met to form fraud first; dishonest tools to cheat others, second; victim's lack of knowledge about dishonest tools, third; the lost possession belonged to victim." (Shambayati, 1375/1998, p. 162)

This definition conforms to our example because the swindler could attract three person's attraction and take their possession away.

Mirmohammadsadeqi has the same definition of 'swindler', and says each crime has three elements; **legal element** (specified in law), **physical element** and **mental element**. Legal element is based in two other elements. Mirmohammadsadeqi says the second element, physical element, has three conditions: 1- physical conduct which depends on kind of crime, act or omission. 2-necessary conditions and situations to form crime. 3- result which is casual link of the physical conduct.

About 'fraud', Mirmohammadsadeqi adds that physical conduct should be 'act' not 'omission'. Omission cannot be a physical element of fraud even if the victim loses his possession.

Mirmohammadsadeqi continues to say that there are three conditions to form 'fraud'. These are first; dishonest tools to cheat others, second; victim's lack of knowledge about dishonest tools, third; the lost possession belonged to the victim. He says swindlers' using of dishonest tools does not necessarily mean his audience was deceived. On the other hand, the fact that the audience was deceived does not necessarily mean that the other one used dishonest tools. Therefore, both of these conditions –dishonest tools and victim's lack of knowledge about dishonest tools- should be met to form 'fraud'.

About result, he says 'fraud' is not an absolute crime (like perjury) but a result crime; that is a specific result is necessary to form 'fraud'. The result codified in law is 'the lost possession belonged to the victim'. Finally, he talks about the third element, mental element. Mental element has two construction parts; general part and especial part. General part means bad intention to commit the crime; that is swindler intends to use dishonest tools. In other words, he intentionally chooses to use dishonest tools. Especial part means swindler intends to take the victims' possession away. Worth saying, victim's lost possession is an important part because the swindler might use dishonest tools for other purposes like marriage, fame, etc. To sum up, swindler uses dishonest tools to take his victims' possession away. (Mirmohammadsadeqi, 1376/1998, pp. 47-87)

Result: Fraud has three elements including legal, physical and mental ones. We see there is compatible between our case and constructing elements of the crime:

- * legal element: article (1) stated in Islamic Law
- * physical element; physical act: taking some masonry, two laptops and some tar away.
- * physical element; conditions: 1- dishonest tools=bad cheques, 2- victim's deception =victims sold the swindler some masonry, two laptops and some tar, 3- lost possession does not belong to the swindler but belongs to others= the lost possession belonged to the victims.
- * physical element; result: victims lost possession.
- * mental element, general bad intention: the swindler knows about his dishonest tools, bad cheques. It was not his first fraud.
- * mental element, especial bad intention: the swindler takes the victims' possession away.

VII. CONCEPTUAL FRAME OF FRAUD

Fraud is a language crime and swindlers have high ability in language. While committing crime, their words, speech style and even their intonation can be studied. The author offers following conceptual frame after studying different cases and interviewing the swindlers and victims. Observing an interview or interrogation with consideration of methodology is very hard because swindlers are very intelligent. For example, the swindlers did not know the author was doing a university research, they even thought the author was herself a defendant. 'Fraud' occurs during a period of time of weeks, months or years. It is not like crime of 'bad language' which occurs immediately. Swindler keeps his effective speech style with his victims for a long time. The author offers following frame:

⁴ To study more, refer to PhD dissertation under the title of 'linguistic analysis of language crimes: forensic linguistics approach', Negar Momeni, Tarbiat Modares University, 2011.

Conceptual Frame		
Fraud		
stages	swindler/defendant	Victim
Need/Greed 1-swindler needs money or has greed for money.	+	+
Proposition/Advertisement (commissive speech act) 2-swindler promises to pay money for some masonry, two laptops and some tar.	+	-
Perlocutionary Act 3- sellers (victims) accepts swindler's word	-	+
Agreement between two parties based on commissive speech act 4-swindler gives the sellers bad cheques	+	+
Problem (commissive speech act are not met) 5- sellers noticed their received cheques are bad. *article	+	-
Completion 6-crime of fraud was committed	+	+

√ Having studied different case, the author found fraud begins with 'need or greed'. Need/greed can be seen in two parties, victim and swindler/defendant. Sometimes, it is no need for money. For example, in one of the cases, educational fraud was committed, that is, some workers of an automobile company need diploma and they refer to an office which claimed it could grant diploma if the applicant would pass 96 units. The worker applicants paid a lot of money but at last they found they were deceived. Therefore, sign of '+' in this stage for both parties mean they are both involved.

√ Sign of '+' in stage of proposition/advertisement shows swindler proposes that he can solve his victim's problem, but in fact he is taking dishonest actions. In this stage, the swindler uses commissive speech acts and resorts to deceptive language. Bribery and fraud are different in this stage, that is, in bribery defendant might offer his proposition verbally and non-verbally. However, a swindler definitely uses his language; it means he offers proposition verbally. The author found the victims are influenced by swindlers' speech style and appearance.

√ Sign of '+' in perlocutionary act for victim shows he is deceived. If there is sign of '-', it means he does not accept swindler's commissive speech acts.

√ After victim accepts swindler's words, stage four - agreement- occurs. Agreement is a bilateral relationship, so there is sign of '+' for both of them.

√ Stage five -problem- has two faces. Sign of '+' for swindler means he did not fulfill his speech acts and sign of '-' means he does not have any problem because his need was met. However, sign of '-' for victim means he did not give any promise but now in this stage he has problem. Because he has problem, sign of '+' is inserted.

√ Completion is the last stage, so both are involved in it.

Article:

*Sometimes stage five -problem- does not occur immediately, for example a swindler might give good cheques to make confidence several times. But after confidence was built, he gives the victim bad cheques at high price then disappears forever.

VIII. CONCLUSION

Linguistic findings in judicial system show a new and scientific science named forensic linguistics. Forensic linguistics connect two fields 'linguistics and law'. This science is like legal medicine, legal psychology, etc. Forensic linguistics helps judicial system conduct investigation into language crimes -perjury, bribery, insult, fake advertisement, fraud, etc- better than before.

Since fraud is a crime in which two persons or two parties are involved, communication is an inevitable part. Linguistic interpretation can interpret ambiguities in legal cases and analyze discourses. Violation of linguistic principles like cooperative principle, frame, schema etc is useful in analysis of crime. This research showed there is compatible between linguistic principles and legal codes in Iran; therefore, it is possible to offer a conceptual frame.

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Dr. Momeni received some honors and awards like: - First Top Grade (1) in PhD Entrance Exam in Iran in 2005.- PhD Proposal Confirmed by Bureau of Police Investigation of Iran in 2010.- M.A. Proposal Confirmed by Hay Group Association, Boston, US in 2003.